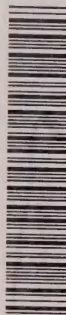


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# Ontario Energy Board

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IN THE MATTER OF THE  
MUNICIPAL FRANCHISES ACT

AND

IN THE MATTER OF AN APPLICATION BY

**THE CONSUMERS' GAS COMPANY LTD.**

FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY

AND

APPROVAL OF A FRANCHISE AGREEMENT  
TO SUPPLY GAS TO THE VILLAGE OF LAKEFIELD

E.B.C. 195 AND E.B.A. 595

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## DECISION WITH REASONS

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OCTOBER 7, 1991

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avec la Commission de l'énergie de l'Ontario.

2300, rue Yonge

26e étage

Toronto (Ontario)

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Téléphone 416/481-1967

(La Commission accepte les appels  
à frais virés.)

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# Ontario Energy Board

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E.B.A. 595

E.B.C. 195

**IN THE MATTER OF** the Municipal Franchises Act,  
R.S.O. 1980, Chapter 309;

**AND IN THE MATTER OF** an Application by The  
Consumers' Gas Company Ltd. for a Certificate of Public  
Convenience and Necessity to construct works to supply  
gas and to supply gas to the inhabitants of the Village of  
Lakefield;

**AND IN THE MATTER OF** a proposed by-law  
granting The Consumers' Gas Company Ltd. the right to  
construct works to supply and to supply gas to the  
inhabitants of the Village of Lakefield.

**BEFORE:** P.W. Chapple  
Presiding Member

C.A. Wolf Jr.  
Member

**Decision with Reasons**

October 7, 1991

ISBN 0-7729-9009-3

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**1.        INTRODUCTION**

**1.1        THE APPLICATION**

1.1.1        By an application dated December 16, 1989 The Consumers' Gas Company Ltd. ("Consumers Gas" or "the Company" or "the Applicant"), pursuant to Section 9 of the Municipal Franchises Act R.S.O. 1980, c. 309, ("the Franchises Act"), applied to the Ontario Energy Board ("the Board") for an Order or Orders approving the terms and conditions upon which, and the period for which, the Company is to be granted the right to construct or operate works to supply, and to supply, natural gas to the inhabitants of the Village of Lakefield ("the Municipality" or "Lakefield"), pursuant to the provisions of a resolution and draft by-law of the Municipality, and a franchise agreement between the Municipality and the Applicant. In its Application, the Company also requested that the Board, pursuant to a resolution of the Municipality and Section 9 of the Franchises Act, direct and declare that the assent of the municipal electors to the terms and conditions of the franchise agreement between the Company and the Municipality is not necessary. This Application was given Board File No. E.B.A. 595.

1.1.2        On December 19, 1989 the Company also applied to the Board for a Certificate of Public Convenience and Necessity authorizing it to construct works to supply natural gas and to supply gas to the inhabitants of

Lakefield, pursuant to Section 8 of the Franchises Act. This Application was given Board File No. E.B.C. 195.

- 1.1.3 Board approval of these Applications is required by Consumers Gas before it can proceed to supply gas in Lakefield through an intended northward extension of its existing distribution system in the City of Peterborough.

## **1.2 THE HEARING**

- 1.2.1 The Board heard evidence and the Company's oral argument-in-chief regarding the Applications in a combined hearing on July 30, 1991. Oral argument by Board Staff and reply argument by the Applicant were heard on August 2, 1991.

### **Appearances**

- 1.2.2 The following appearances were registered at the hearing:

Peter Y. Atkinson for the Applicant

Kenneth Rosenberg for Board Staff

### **Witnesses**

- 1.2.3 The Company called the following employees as witnesses:

Ronald Allan Aylsworth Residential Sales Manager,  
Central Region

Patrick Davies General Manager, Central  
Region

Donald Ferguson Commercial/Industrial Sales  
Manager, Central Region

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DECISION WITH REASONS

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Vincent Leacourt

Residential Sales  
Representative, Central Region

Clifford Clark

General Supervisor, Planning  
and Technical Services,  
Central Region

Ann Wilson

Manager, Financial Studies

- 1.2.4 The Company also called as a witness Wilson Bullied, Reeve of the Municipality and Chairman of the Lakefield Public Utilities Commission.
- 1.2.5 Copies of a verbatim transcript and all exhibits filed in this proceeding are retained at the Board's office where they are available for public review.
- 1.2.6 While the Board has considered all the evidence and submissions presented in this proceeding, only the decisive issues are summarized in this Decision with Reasons.

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## DECISION WITH REASONS

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**2.           THE EVIDENCE AND POSITIONS OF THE PARTIES**

**2.1           PURPOSE AND NEED**

2.1.1       Consumers Gas claimed to have "numerous requests" for it to supply gas in Lakefield in order to provide immediate economic benefits and to assist in efforts to promote economic development in the community. Some of the parties reportedly interested in obtaining gas were identified as:

Lakefield College School  
Peterborough County Board of Education  
County of Peterborough  
Lakefield Research  
Local builders  
Commercial establishments  
Residences throughout the community

2.1.2       Consumers Gas' witnesses testified that an initial forecast of the potential gas demand in Lakefield had been based on its experiences in similar communities, and confirmed through surveys of the residences and commercial installations within the Municipality. This yielded the forecast filed with the Board in March 1990, ("the original forecast").

- 2.1.3 Subsequent to the issuance of the Board's E.B.L.O. 231 et al Interim Decision of June 18, 1990 ("the Deep River Decision") the Company revisited its projections. A revised forecast for Lakefield was prepared on the basis of additional late responses to the Company's original customer survey and a claimed heightened local awareness and interest in natural gas. This more optimistic forecast update was filed in November 1990, ("the updated forecast").
- 2.1.4 Consumers Gas conducted a random telephone survey of thirty Lakefield residences in June 1991 ("the mini-survey"). The results of this survey suggested that more of the residential heating in Lakefield could be in the form of electric baseboard heating. Also, based on the mini-survey results, it appeared that residents with baseboard heating might be more receptive to gas conversion than was first expected. The Company did not adjust its updated forecast as a result of the mini-survey.
- 2.1.5 The Company claimed that its re-evaluations, when developing its November 1990 updated forecast, revealed that its new housing expectations for Lakefield were too pessimistic for the near-term. Also, the near-term capture rates for replacement residential loads were increased due to reduced competition from Ontario Hydro and the Company's general assessment that "market receptivity for gas has never been greater, even when federal government funds were available for conversion (to gas)".
- 2.1.6 Board Staff filed, as evidence in this proceeding, excerpts from the Company's prefiled evidence in its upcoming E.B.R.O. 473 rates case. Board Staff argued that the Company's evidence for the rates case is that Consumers Gas will have to fight harder and spend more money to maintain market share in the face of increased competition from oil suppliers in the upcoming year, and that customer preference for electric heating continues to exist in some quarters.

2.1.7 The following tables show the attachments forecast in the Company's original and updated forecasts:

Forecast Residential Customer Additions				
New Housing			Conversions	
Year	Original Forecast	Update	Original forecast	Update
1	0	0	100	150
2	0	50	50	75
3	0	50	50	75
4	20	50	80	100
5	20	50	80	116
6	27	50	20	75
7	27	50	20	9
8	27	50	20	10
9	27	50	20	10
10	27	50	20	10
11	27	20	20	5
12	27	30	20	5
13	27	20	20	5
14	27	20	20	5
15	27	20	20	2
16	26	20	20	2
17	26	20	20	2
18	26	20	20	2
19	26	20	20	1
20	26	10	20	1
Total	440	650	660	660

Forecast Commercial Customer Additions		
Year	Original Forecast	Update
1	10	10
2	5	10
3	5	10
4	10	10
5	10	10
6 through 20	45	35
20 Year Total	85	85

- 2.1.8 Board Staff challenged Consumers Gas' forecast methodology claiming that it was not appropriate to first establish a target and then attempt to confirm it with surveys. Board Staff contended that a more valid forecast for Lakefield would be obtained by extending the historical capture and growth rates observed in similar communities over the past 11 years.
- 2.1.9 In response, Consumers Gas reiterated that for a number of reasons, the outlook for future growth in natural gas demand is dramatically more optimistic than has been the case in recent years.
- 2.1.10 Board Staff further challenged the Company's interpretations of its survey results. For example, Board Staff maintained that 199 positive responses out of 301 replies to Consumers Gas' survey covering 890 existing residences did not support the Company's conclusion that a capture rate of 66 percent would be achieved in the retrofit market.
- 2.1.11 Board Staff argued that the Company's Application for a Certificate of Public Convenience and Necessity should be denied. However, Board Staff submitted that, should the Board grant the requested Certificate, two conditions should be imposed.

- 2.1.12      The first of these conditions would require Consumers Gas to file a record of the actual customer attachments to date in Lakefield, at the third, sixth and tenth years after the proposed facilities had been constructed.
- 2.1.13      The second of Board Staff's suggested conditions would require that Consumers Gas begin to supply gas in Lakefield within 24 months of receipt of the Board's decision granting the Certificate.
- 2.1.14      Consumers Gas was willing to be subject to the latter condition which would "sunset" the Certificate after 24 months in the event that the required facilities to service Lakefield had not been installed.
- 2.1.15      Consumers Gas stated, in reply argument, that it could comply with Board Staff's proposed condition requiring filings in subsequent years. However, Mr. Atkinson argued that such filings should be considered to be a rates case issue.
- 2.1.16      The Reeve testified that concerns over water flow had caused the Municipality to impose a one year freeze on residential developments late in 1989. This by-law was subsequently extended for an additional year. Mr. Bullied testified that 100 new large home constructions will follow the partial lifting of the freeze in October 1991, and that further developments are currently being discussed between Lakefield and a number of developers. He also revealed that the Municipality is taking action to annex an additional 2,000 acres in anticipation of further growth. The County's annexation study will, however, not be completed until 1994.
- 2.1.17      The Reeve, based on statistics developed for the Municipality, estimated that the population in Lakefield would grow from its current 2,300 residents to 3,500 in the year 2011, and that, with annexation, this would be increased to 5,000 by that time. The prospects of dramatic growth, according to Mr. Bullied, make it unwise to view the Municipality's future

growth on a historical basis, or to compare Lakefield with its neighbouring communities.

- 2.1.18 The Reeve confirmed that the Municipality supports the Company's application and he filed a letter from the Lakefield Chamber of Commerce which urged the Board's approval.
- 2.1.19 Mr. Bullied believed, and counsel for the Company and for Board Staff confirmed, that the franchise agreement between Lakefield and Consumers Gas, which is for a period of 20 years, is in the form of the model agreement approved by the Board.
- 2.1.20 The Reeve testified that no existing franchises or Certificates of Public Convenience and Necessity for the supply of gas to Lakefield have been issued to any other supplier.
- 2.1.21 The Lakefield Town Council passed a resolution authorizing the submission of the franchise agreement to the Board for approval. The resolution also requests that the Board dispense with the need for the municipal electors' assent to the Municipality's by-law which approves the agreement granting the franchise to Consumers Gas.
- 2.1.22 Board Staff did not object to the form of the Company's franchise agreement with Lakefield, or the Board's dispensing with the need for the assent of the electors.

## **2.2 FACILITIES**

- 2.2.1 Consumers Gas intends to supply the residents of Lakefield via an extension of its existing distribution system in Peterborough. It is currently envisioned that 8.5 kilometres of NPS 6 intermediate pressure pipeline will be constructed along the Highway 28 right-of-way, and

connected to a network of small diameter pipelines within the Municipality.

2.2.2 NPS 4 pipeline crossings over the Otonabee River and the Trent Canal were pre-built in 1974 at a cost of \$4,000. These currently unused crossings will be utilized in this project.

2.2.3 The normal operating pressure in the new facilities will be at 440 kPa maximum. The Company does not anticipate any significant environmental or safety problems in connection with the construction of the facilities to serve Lakefield. Board Staff accepted the Company's environmental assessments.

2.2.4 The Company estimated the total cost of the project to serve Lakefield to be \$1,051,186. Board Staff questioned the exclusion of the present value of the pre-built water crossings, (i.e. \$27,500), from the project's costs. Consumers Gas' evidence was that these costs are sunk costs which are already included in rate base and are, therefore, not incremental costs of the project.

## 2.3 ECONOMIC FEASIBILITY

2.3.1 In response to a request by Board Staff, Consumers Gas filed an economic feasibility analysis for the distribution system expansion to Lakefield in March 1990. This analysis was updated by the Company in November 1990.

2.3.2 Board Staff argued that the granting of a Certificate application should not be a routine matter requiring little more than the payment of a \$25 fee. It maintained that it was necessary to determine the economic feasibility of an underlying project in order to satisfy the need to establish public convenience and necessity as a requisite for the granting of a Certificate.

- 2.3.3 Board Staff contended that Consumers Gas had not presented clear, convincing and cogent evidence to support its claims for the economic viability of its intended project to supply gas in Lakefield. Based on the historical evidence of growth, and attachment rates in similar communities, Board Staff concluded that Consumers Gas had understated the level of subsidy that the Lakefield expansion would impose on the Company's existing ratepayers.
- 2.3.4 Mr. Atkinson argued that the level of the testing of economic feasibility suggested by Board Staff has not previously been required by the Board as part of a Certificate hearing. He maintained that the prudence of distribution system investments is a matter which should more properly be addressed in a rates case hearing. He argued that to require this level of detail at this time would mean "we are embarking upon a different and more complex type of regulation with respect to what have heretofore been relatively straight forward Certificate and franchise applications".
- 2.3.5 Mr. Atkinson offered that the evidence on economic feasibility had not been prepared as part of Consumers Gas' initial filing but was provided by the Company in response to a request by Board Staff "because we generally comply with those kind of requests".
- 2.3.6 The economic feasibility analyses which the Company provided were consistent with the methodology defined in the Board's E.B.O. 134 Report.

The key elements and results of the Company's Stage 1 and 2 analyses are summarized in the following table:

Economic Feasibility Test Parameters and Results		
	Original Filing	Update
Stage 1 NPV *	\$(625,400)	\$(467,600)
Stage 2 NPV	\$789,600	\$1,702,200
Stage 2 benefit/cost ratio	0.54	0.7
System-wide average customer subsidy/10 <sup>3</sup> m <sup>3</sup>	1.1¢	0.8¢
Stage 1 Discount Rate	8.86%	8.86%
Stage 1 vs. Social Discount Rate Impact	\$(327,300)	\$(518,700)
Stage 1 NPV of tax, labour and foreign exchange externalities	\$557,200	\$793,900
Stage 2 NPV of customer fuel saving, sales tax on conversions and alternate fuel supplier cash flow externalities	\$1,721,800	\$2,227,600
Cash flows from year 1 additions	\$94,247	\$185,217
Attachment period	20 years	20 years
Customer revenue horizon	55 years	55 years
Project life	75 years	75 years
* Net Present Value		

2.3.7 Consumers Gas' witnesses testified that the update of its economic feasibility test was based on revised forecasts of customer attachments that were prepared by its sales force, subsequent to the Board's Deep River Decision. The improved economics that resulted were largely due to the increased number of customer attachments in the early years of the NPV analyses.

2.3.8 The Company maintained that the Board's E.B.O. 134 Report allows subsidization of expansion projects by existing ratepayers so long as it is

not at an undue level. Consumers Gas concluded that an average subsidy of 0.8¢ per 10<sup>3</sup>m<sup>3</sup> did not constitute an undue burden on the current ratepayers. The Company also cited the Deep River Decision, wherein ratepayer subsidies were found to be appropriate for a project with a 0.7 benefit to cost ratio.

- 2.3.9 Board Staff suggested that an attachment period of 10 years, a customer revenue horizon of 20 years and a project life of 30 years would be more appropriate when testing the facilities to serve Lakefield, and that under such a scenario the benefit/cost ratio would drop from 0.7 to perhaps as low as 0.5. Consumers Gas' witness testified that an analysis based on Board Staff's assumptions yielded a 0.58 ratio. The Company's witness noted, however that this analysis did not account for the residual benefits that would be associated with the assets in place. It was Ms Wilson's assessment that, if these residual benefits were included, the benefit/cost ratio would remain essentially unchanged under Board Staff's suggested scenario.
- 2.3.10 Board Staff again challenged the increased customer additions in the Company's updated forecast as unfounded, and argued that the economic feasibility was, therefore, overstated.
- 2.3.11 The Company's witnesses individually affirmed that there had been no on-going dialogue between those who constructed the forecast and the employees who conducted the economic feasibility tests. Consumers Gas claimed that the forecast numbers were used in the economic feasibility tests without adjustment or collusion.

**2.4 TIMING**

- 2.4.1 The Company sought to extend service to Lakefield with as little disruption as possible during the July-August tourist season. The evidence was that if construction had commenced by May 1, 1991 the proposed gas mains in the Lakefield commercial district could have been completed by July 1, 1991. Given that these dates had already passed, the Company's witnesses testified that it was still their intention to construct the facilities in time to have gas available in Lakefield for the 1991/1992 winter heating season. To accomplish this, approval by the Board would be required in a matter of days rather than weeks.
- 2.4.2 The Company's witnesses further testified that, if encountered, winter construction would not pose environmental or safety concerns since the planned route for the pipeline is exclusively within road allowances.
- 2.4.3 Mr. Atkinson argued that any delay in granting approval until the Company's near-term growth forecasts are proven by experience would be counter productive in that the Company might lose the opportunity to capture in new housing starts in the interim. The Company's updated forecast projected 50 new residential housing attachments in each of the second and third years following the supply of gas to Lakefield.



**3. BOARD FINDINGS**

**3.1 THE E.B.A. 595 APPLICATION**

3.1.1 The Board notes that the franchise agreement between Consumers Gas and Lakefield is in a form which has previously been found acceptable to the Board, and that said agreement is for a term of 20 years.

3.1.2 No party objected to the Board approving the form and term of the franchise agreement. The Board also notes Mr. Bullied's testimony that, at the time of the hearing, Lakefield had not been approached by any supplier, other than Consumers Gas, seeking to supply gas to the Municipality.

3.1.3 The Board observes that the rights being granted to Consumers Gas by the Municipality, as defined in the franchise agreement, are being granted on a non-exclusive basis.

3.1.4 Both Lakefield and Consumers Gas requested that the Board dispense with the need for the assent of the electors with regard to the by-law of the Municipality authorizing the franchise agreement. Board Staff did not object to the Board's granting this request.

3.1.5 The Board, therefore, approves the terms and conditions of the franchise agreement between Lakefield and Consumers Gas, and the period for which said agreement shall be in effect.

3.1.6 The Board further directs and declares that it is proper under the circumstances to dispense with the need for the assent of the municipal electors to the by-law authorizing the franchise agreement.

3.1.7 The Board, therefore, grants Consumers Gas' E.B.A. 595 Application as presented, without prejudice to any future proceeding of the Board which may deal further with the matter of the supply of natural gas to Lakefield.

### **3.2 THE E.B.C. 195 APPLICATION**

3.2.1 When considering the Application for a Certificate of Public Convenience and Necessity in this case the Board has viewed the "public interest" in two distinct ways:

- With regard to the granting of this Certificate of Public Convenience and Necessity, the Board has considered "the public" in a narrow context as being the residential, business and governmental interests in Lakefield.
- With regard to considerations relative to the construction of the expansion project to serve the Municipality, the Board has adopted a broader view of "the public" as going beyond Lakefield to include the Company's ratepayers and shareholders, as well as the societal interests impacted by the project.

3.2.2 The Board notes that there is strong support within Lakefield for the supply of gas to that community. The Board further notes that no other supplier of natural gas has approached Lakefield or the Board to express an interest in supplying the Municipality.

- 3.2.3 Given the more narrow definition of "the public" as described above for this case, the Board finds that granting the Company's Application for a Certificate of Public Convenience and Necessity to allow it to construct works to supply gas and to supply gas to the inhabitants of Lakefield is in the public interest. The Board therefore grants to the Company the applied-for Certificate of Public Convenience and Necessity. Should Consumers Gas fail to install facilities to supply gas to Lakefield within 24 months following the Board's Order granting the Certificate, said Certificate shall expire 24 months following the date of that Order.
- 3.2.4 However, the Board finds it difficult to endorse the Company's forecast of customer attachments in Lakefield. While the Municipality may indeed be on the verge of more rapid growth, and while gas may be a preferred fuel, in the Board's opinion the results of the Company's surveys do not adequately substantiate the optimistic forecasts that were presented. For example, the Board concurs with Board Staff's concern that 199 positive responses out of a survey of 890 existing residences does not support the Company's conclusion that it will achieve a 66 percent capture rate in the retrofit market. The Company's forecasts, therefore are seen to be based more on the Applicant's subjective judgement than on fact.
- 3.2.5 The Board notes Mr. Atkinson's argument-in-chief wherein he stated "... in a rate case from time to time the Company's forecasts of capital requisitions are tested for different projects. And if the Board were to find that the Company was acting in an imprudent fashion, it can visit that upon the Company in the rates case".
- 3.2.6 In the Board's opinion, the prudence of constructing the Lakefield expansion depends very much on the reasonableness of the revenue forecasts for that expansion, particularly in the early years.
- 3.2.7 Should Consumers Gas decide to proceed with this expansion as planned, the Board directs that it file the forecast and actual costs and revenues for

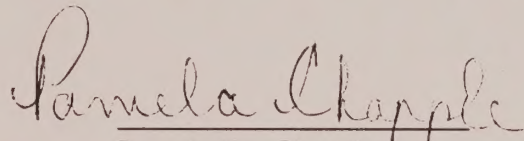
this specific project as part of the Company's filings for its earliest rates case following a full year of experience in supplying gas to Lakefield.

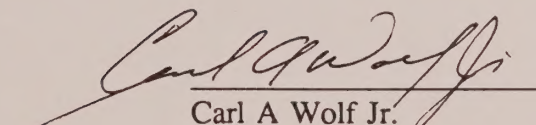
- 3.2.8 The Board cautions the Applicant that, pursuant to Section 19(4) of the Act, the Board may find it appropriate to reduce the allowance in rate base, or take other actions, should it become evident that the economic expectations for this proposed expansion were unreasonably overestimated.
- 3.2.9 The Board interprets Mr. Atkinson's statement, as quoted above, as an indication of the Applicant's expectation that the prudence of its forecasts and actions would be tested in a subsequent rates case and that it would be held accountable at that time for the financial implications of its actions.

4. COSTS

- 4.0.1 The intervenors in these proceedings were limited to Lakefield and Board Staff. Lakefield did not request an award of its costs in this hearing.
- 4.0.2 The Board finds that Consumers Gas shall pay the Board's costs of and incidental to these proceedings upon receipt of the Board's Cost Order and invoice.

DATED AT Toronto October 7, 1991.

  
Pamela W. Chapple  
Presiding Member

  
Carl A Wolf Jr.  
Member





